

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE
CHAPTER 81 LICENSURE OF MASSAGE THERAPISTS

INDEX

| Section | Subject | Page |
|----------------|--|-------------|
| 81-001 | Scope and Authority | 1 |
| 81-002 | Definitions | 1 |
| 81-003 | Initial and Reciprocity Licensure Requirements | 6 |
| 81-004 | Temporary Massage Therapy License Requirements | 11 |
| 81-005 | Examination | 13 |
| 81-006 | Continuing Competency | 13 |
| 81-007 | Renewal | 17 |
| 81-008 | Disciplinary Actions | 21 |
| 81-009 | Voluntary Surrender or Limitation | 26 |
| 81-010 | Reinstatement | 27 |
| 81-011 | Administrative Penalty | 34 |
| 81-012 | Fees | 35 |

Title 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

Chapter 81 LICENSURE OF MASSAGE THERAPISTS

81-001 SCOPE AND AUTHORITY: These regulations govern the credentialing of Massage Therapists under Neb. Rev. Stat. §§38-1701 to 38-1715 and the Uniform Credentialing Act.

81-002 DEFINITIONS

1. Act means Neb. Rev. Stat. §§38-1701 to 38-1715, known as the Massage Therapy Practice Act.
2. Active Addiction means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.
3. Alcohol or Substance Abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:
 - a. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;
 - b. Recurrent alcohol or substance use in situations in which it is physically hazardous;
 - c. Recurrent legal problems related to alcohol or substance use; or
 - d. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.
4. Attest or Attestation means that the individual declares that all statements on the application are true and complete. Attestation to meeting continuing competency requirements satisfies the documentation requirement of Neb. Rev. Stat. § 38-142.
5. Board means the Board of Massage Therapy.
6. Client means any person with whom the massage therapist has an agreement to provide massage therapy.
7. Complete Application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the fees and all required documentation.
8. Confidential Information means information protected as privileged under applicable law.
9. Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

10. Continuing Competency means activities to ensure:

- a. The maintenance by a credentialed person of knowledge and skills necessary to competently practice massage therapy;
- b. The utilization of new techniques based on scientific and clinical advances; and
- c. The promotion of research to assure expansive and comprehensive services to the public.

The continuing competency activity may be obtained through one or more of the following types of activities:

1. National Examination;
2. Publication;
3. Jurisprudence Examination;
4. Instructor at a Massage Therapy School;
5. Practical Examination;
6. Massage School Training;
7. College or University Coursework; or
8. Workshops and Lectures (Continuing Education Programs);

11. Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.

12. Course of Study and Training in Massage Therapy means a course of not less than 1,000 hours, distributed over a term of not less than 9 months. All hours must be gained in a class setting. For purposes of this section, continuing education is not considered study and training in massage therapy. Such study and training must consist of:

- a. 700 hours of the course of study must consist of at least 100 hours in each of the following areas:
 - (1) Anatomy: May include, but is not limited to, structure of the human body, study of cells, tissues, bones, muscles, organ systems, histology, embryology, kinesiology, biomechanics, etc.;
 - (2) Health Service Management: May include, but is not limited, to professional ethics, legalities of massage, business practices, promotion, employment opportunities, oral presentations, telephone techniques, marketing plan, sales techniques, resumes, bookkeeping, financial management, insurance coverage, networking, interview techniques, etc. These hours must be gained under the supervision of a licensed massage therapist;

- (3) Hydrotherapy: May include, but is not limited to, history, benefits of water treatment, cryotherapy, body wraps/masks, salt glows, body scrubs, body shampoos, moisturizers, hot packs, steam cabinets, dry brushing, therapeutic water modalities, methods of cold application, heat therapy, contrast baths, skin contra-irritants, spas, etc. These hours must be gained in a class setting under the supervision of a licensed massage therapist;
 - (4) Hygiene and Practical Demonstration:
 - (a) Hygiene may include but is not limited to physiology of digestion, weight control, herbal therapy, nutrition, food combining, supplementation, wellness, hygiene principles and practices, CPR, first aid, equipment and sanitation, infectious and contagious disease control, etc. These hours must be taught by a licensed massage therapist;
 - (b) Practical Demonstration may include, but is not limited, to various massage therapy techniques and demonstration, hands-on training, student clinic hours, etc. These hours must be taught by a licensed massage therapist;
 - (5) Massage: May include, but is not limited to, history of massage, benefits of massage, physiology of massage, equipment and procedures, psychology of massage, interpersonal client contact, relaxation and visualization, proper draping techniques, general guidelines for massage, principles of body massage, etc. These hours must be taught by a licensed massage therapist;
 - (6) Pathology: May include, but is not limited to, definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect, blood pressure, pulse monitoring, injury and soft tissue disfunction, etc. These hours must be taught by a licensed massage therapist or a person with appropriate training in the subject matter; and
 - (7) Physiology: May include, but is not limited to, endocrinology, biochemistry, interaction of hormones to the body's balance and metabolism, function of human body, and organ systems, kinesiology, biomechanics, etc. These hours must be taught by a licensed massage therapist or a person with appropriate training in the subject matter; and
- b. The remaining 300 hours must be obtained in subject areas related to the clinical practice of massage therapy which may include, but is not limited to, reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy and infant massage, physiology and psychology of exercise, acupressure therapy, management techniques, stress and practices, hands-on-training, review of health histories and documentation, National Certification Examination for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination

for Therapeutic Massage (NCETM), Advanced Clinical Examination (ACE) or Massage and Bodywork Licensing Examination (MBLEx) topics, etc. These hours must be gained under the on-site supervision of a licensed massage therapist or health care professional whose scope of practice includes massage techniques.

13. Credential means a license, certificate, or registration.
14. Department means the Division of Public Health of the Department of Health and Human Services.
15. Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:
 - a. Tolerance as defined by either of the following:
 - (1) A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
 - (2) A markedly diminished effect with continued use of the same amount of alcohol or the substance;
 - b. Withdrawal as manifested by either of the following:
 - (1) The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
 - (2) Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
 - c. Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;
 - d. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
 - e. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;
 - f. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or
 - g. Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.
16. Director means the Director of Public Health of the Division of Public Health or his/her designee.
17. Inactive Credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.
18. License means an authorization issued by the Department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

19. Licensure Examination means:
- The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM) or Advanced Certification Examination (ACE) developed by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB);
 - The Massage and Bodywork Licensing Examination (MBLEx) developed by the Federation of State Massage Therapy Boards (FSMTB); or
 - Other equivalent examinations as approved by the board.
20. Massage Therapist means a person licensed to practice massage therapy.
21. Massage Therapy means the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy. It does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.
- Well-being includes, but is not limited to:
 - Remediation, such as myofacial release, active/passive stretching, and similar modalities;
 - Relaxation, such as Swedish Massage, hot stone, and similar modalities; and
 - Holistic, such as Ortho-Bionomy®, polarity, shiatsu, reflexology, acupressure, and similar techniques.
 - Mechanical or electrical manipulation includes, but is not limited to, the use of the following equipment:
 - Electrical stimulation equipment under 35 volts output;
 - Oscillating (vibrating) equipment; and
 - Hydrotherapy equipment.
22. Military Service means full-time duty in the active military service of the United States, a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as it existed on January 1, 2007.)
23. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 81.
24. Official means issued by and under the original seal of the educational institution.

25. Pattern of Incompetent or Negligent Conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.
26. Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. §38-121.
27. Program Sponsor means an individual or organization that sponsors continuing competency programs to licensees.
28. Served in the Regular Armed Forces has the same meaning as "military service" in these regulations.

81-003 INITIAL and RECIPROCITY LICENSE REQUIREMENTS: Any person who wishes to practice massage therapy must obtain a license.

81-003.01 Qualifications: To receive a credential to practice massage therapy, an individual must meet the following qualifications:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Resident Information: Be a citizen of the United States, an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;
3. Education: Have completed a course of study and training in massage therapy not less than 1,000 hours, distributed over a term of not less than 9 months as specified in 172 NAC 81-002, item 12, which includes at least:
 - a. 100 hours in each of the following areas:
 - (1) Anatomy;
 - (2) Health Service Management;
 - (3) Hydrotherapy;
 - (4) Hygiene and Practical Demonstration;
 - (5) Massage;
 - (6) Pathology;
 - (7) Physiology; and
 - b. The remaining 300 hours must be obtained in subject areas related to the clinical practice of massage therapy; and

Reciprocity: An applicant who is licensed in another jurisdiction and has not completed 1,000 hours of training in massage therapy, may obtain hours to equal the required 1,000 hours of training through a massage therapy program, a college/university, work experience and/or continuing education. The applicant is not required to have attained the

specified hours in the areas identified in 81-003.01, items_3a and 3b. Hour equivalents may be granted in the following manner:

- (1) 50-60 minutes equals 1 hour obtained from a course of study in massage therapy;
- (2) 1 semester credit hour of massage therapy related college/university hours equals 15 hours;
- (3) 100 hours for each year of full-time practice as a massage therapist; and/or
- (4) Up to 100 hours obtained from NCBTMB or FSMTB approved continuing education programs.

4. Examination: Have received a passing score on the licensure examination as set by NCBTMB or FSMTB and approved by the Board.

Reciprocity: An applicant who is licensed in another jurisdiction must also successfully pass the Board developed jurisprudence examination, with a score of at least 75%.

81-003.02 Application: To apply for a credential to practice massage therapy, the individual must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following

1. Written Application:

- a. Personal Information:

- (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
- (2) Date of birth (month, day, and year);
- (3) Place of birth (city and state or country if not born in the United States);
- (4) Mailing address: street, rural route, or post office address; and city, state, and zip code, or country information;
- (5) The applicant's:
 - (a) Social Security Number (SSN);
 - (b) Alien Registration Number ("A#"); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
- (6) The applicant's telephone number including area code (optional);
- (7) The applicant's e-mail address (optional);
- (8) The applicant's fax number (optional);
- (9) Citizenship: The applicant must state that s/he is one of the following:
 - (a) A citizen of the United States;
 - (b) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or

- (c) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;
 - b. Practice Before Application: The applicant must state:
 - (1) That s/he has not practiced massage therapy in Nebraska before submitting the application; or
 - (2) If s/he has practiced massage therapy in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and business name and location of practice; and
 - c. Attestation: The applicant must attest that:
 - (1) S/he has read the application or has had the application read to him/her;
 - (2) All statements on the application are true and complete;
 - (3) S/he is of good character;
 - (4) S/he has not committed any act that would be grounds for denial under 172 NAC 81-007 or if an act(s) was committed, provide an explanation of all such acts; and
 - (5) For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.
- 2. Documentation: The applicant must submit the following documentation with the application:
 - a. Age: Evidence of age, such as:
 - (1) Driver's license;
 - (2) Birth certificate;
 - (3) Marriage license that provides date of birth;
 - (4) Transcript that provides date of birth;
 - (5) U.S. State identification card;
 - (6) Military identification; or
 - (7) Other similar documentation;
 - b. Good Character: Evidence of good character, including:
 - (1) Other Credential Information: If the applicant holds a credential to provide health services, health related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed.

The applicant must have the licensing agency submit to the

Department a certification of his/her credential;

- (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
 - (3) Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial; and
 - (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
 - (a) A list of any misdemeanor or felony convictions;
 - (b) A copy of the court record, which includes charges and disposition;
 - (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (f) Any other information as requested by the Board/Department;
- c. Evidence that the applicant is:
- (1) A citizen;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) who is eligible for a credential under the Uniform Credentialing Act;
- d. Evidence of citizenship, lawful permanent residence, and/or immigration status may include a copy of:
- (1) A U.S. Passport (unexpired or expired);
 - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
 - (3) An American Indian Card (I-872);
 - (4) A Certificate of Naturalization (N-550 or N-570);
 - (5) A Certificate of Citizenship (N-560 or N-561);
 - (6) Certification of Report of Birth (DS-1350);
 - (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
 - (8) Certification of Birth Abroad (FS-545 or DS-1350);
 - (9) A United States Citizen Identification Card (I-197 or I-179);

- (10) A Northern Mariana Card (I-873);
 - (11) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (13) A document showing an Alien Registration Number ("A#") with visa status; or
 - (14) A Form I-94 (Arrival-Departure Record) with visa status;
- e. Education: Documentation of education, including:
- (1) An official transcript showing that s/he has completed a course of study and training in massage therapy
 - (2) Name and date of diploma/degree awarded; and
 - (3) Name of school, college, university that awarded the diploma/degree;
- Reciprocity: An applicant who is licensed in another jurisdiction may also submit evidence of college/university coursework, work experience and/or continuing education as defined in 172 NAC 81-003.01, item 3.
- f. Examination: Documentation that the applicant:
- (1) Requested that the examination rating/grades be sent directly to the Department from the appropriate examination service or State Board Office;
 - (2) Submitted a completed request for special accommodations, if special testing accommodations are needed by the applicant; and
 - (3) Submitted any other documentation as requested by the Board/Department; and
3. Fee: The applicant must submit the required license fee along with the application and all required documentation.
- a. Prorated Fee: When a credential will expire within 180 days after its initial issuance date and the initial credentialing fee is \$25 or more, the Department will collect \$25 or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential will be valid until the next subsequent renewal date.

81-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

81-003.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential or if the applicant is found to have committed any of the grounds listed in 172 NAC 81-008, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

81-003.05 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

81-003.06 Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 81-011 or such other action as provided in the statutes and regulations governing the credential.

81-003.07 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

81-003.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

81-003.09 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

81-004 TEMPORARY MASSAGE THERAPY LICENSE REQUIREMENTS

81-004.01 Qualifications and Limitations: A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination or if the individual is applying for licensure by reciprocity as specified in 172 NAC 81-003. A temporary license is subject to the following requirements and limitations:

1. A temporary licensee must be supervised in his or her practice by a licensed massage therapist.
2. A temporary license will be valid for 60 days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license will be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months.
3. A temporary license will not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

81-004.01A Reciprocity: An applicant who is licensed in another jurisdiction may apply for a temporary license to practice massage therapy if s/he is completing the additional hours necessary to equal 1,000 hours as defined in 172 NAC 81-003.01, item 3 or needs to take the licensure examination.

81-004.02 Application: To apply for a temporary credential to practice massage therapy, the individual must submit a complete application for initial licensure or reciprocity to the Department as described in 172 NAC 81-003.02. A complete application includes all

required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain all the required documentation under 172 NAC 81-003.02. In addition to the application for initial licensure, the following must be submitted to the Department:

1. Supervisor and Establishment Information: The applicant must provide the:
 - (1) Name and license number of supervisor;
 - (2) Signature of licensee who agrees to supervise;
 - (3) Name of establishment where supervision will occur;
 - (4) Address of establishment; and
 - (5) Telephone number of establishment (optional);
2. Fee: The required temporary license fee.

81-004.03 Standards for Supervision: The supervisor of a person who holds a temporary massage therapy license must:

1. Be present at the location where the temporary licensee is providing massage therapy services;
2. Consult with and direct the actions of a person who holds a temporary license to practice massage therapy; and
3. Immediately notify the Department when supervision of the temporary licensee is terminated.

81-004.04 License Extension Circumstances: The Department, upon recommendation of the Board, may grant an application for extension of a temporary license when the applicant has applied to retake the licensure examination and shows good cause why such license should be extended. Circumstances which may result in extension of the temporary license may include but are not limited to:

1. The applicant became ill during the licensure examination to the extent that s/he could not complete the examination;
2. The applicant had to leave the licensure examination due to inclement weather conditions which caused the applicant to be unable to complete the examination; or
3. The applicant suffered an incapacitating injury prior to the licensure examination which allowed him/her to take the examination but affected his/her ability to perform well on the examination.

84-004.05 License Extension Limitations: A temporary licensee who fails the licensure examination may apply for an extension of his/her temporary license to practice massage therapy, subject to the following requirements and limitations:

1. A temporary license may not be extended beyond 6 months; and
2. An applicant for extension of a temporary license must submit a written request for extension, stating the reason(s) for said request.

81-004.06 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

81-004.07 Denial of Credential: If an applicant for a temporary credential does not meet all of the requirements for a credential or if the applicant is found to have committed any of the grounds listed in 172 NAC 81-008, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

81-004.08 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

81-004.09 Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 81-011 or 81-01281-012 such other action as provided in the statutes and regulations governing the credential.

81-004.10 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

81-004.11 Address Information: Each credential holder must notify the Department of any change to the address of record.

81-004.12 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

81-005 EXAMINATION: To take the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), Advanced Certification Examination (ACE) or Massage and Bodywork Licensing Examination (MBLEx), an applicant must apply directly to the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the Federation of State Massage Therapy Boards (FSMTB).

81-006 CONTINUING COMPETENCY: Each person holding an active credential within the state must, on or before the date of expiration of the credential, comply with the continuing competency requirements for his/her profession. Except as otherwise provided in 172 NAC 81-007.03, the Department will not renew the credential of any person who has not complied with these requirements. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities.

81-006.01 General Requirements: On or before November 1 of each odd-numbered year, each licensed massage therapist who is in active practice in the State of Nebraska must complete 24 hours of approved continuing competency hours/credits during the preceding 24 month period. Additional hours earned during this period which are above and beyond the required 24 hours can not be utilized for subsequent renewals.

81-006.02 Types of Activities: Licensees must earn 24 hours/credits through a combination of the following types of activities.

1. Mandatory Hands-on Hours: A licensee must complete at least 14 hours of approved hands-on continuing education through workshops each renewal period (1 hour of attendance = 1 credit). A licensee may earn all 24 hours through hands-on workshops. These hours must meet the following:
 - a. The content of the workshop(s) must include at least 75% HANDS-ON technique which is the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy; up to 25% may be theory related to hands-on technique; and
 - b. The agenda must reflect a set period of time for class participation (hands-on practice).
2. Mandatory Ethics Hours: Each licensee must obtain at least 3 hours in ethics; and
3. Optional Hours: A licensee may earn the remaining credits in one or a combination of the following continuing competency activities:
 - a. National Examination. 7 credits will be granted for licensees who successfully pass the examination;
 - b. Publication. 7 credits will be granted for an article published in a professional health related journal; a newsletter article or letter to the editor does not meet this requirement;
 - c. Jurisprudence Examination on State Laws (50 question take home test). 3 credits will be granted for licensees who receive a score of 75% or above;
 - d. Instructor at a Massage Therapy School. 1.5 credits will be granted for each hour of teaching up to a maximum of 7 hours;
 - e. Practical Examination (must be administered by a Nebraska Licensed Massage Therapy School). 3 credits will be granted;
 - f. Massage School Training / College or University Coursework (resident/distance. 1 hour of training = 1 credit, 1 semester college credit hour = 15 credits, 1 quarter college credit = 10 credits, up to a maximum of 7 credits;
 - g. Workshops and Lectures (Continuing Education Programs). 1 credit will be

granted for each 50 minutes of participation up to a maximum of 7 credits;

- h. Homestudy Programs: Only homestudy programs relating to ethics will be acceptable for renewal. Up to a maximum of 7 credits will be granted.
- 4. Presenter Credit: If the licensee is a presenter, s/he must maintain documentation of his/her presentation of continuing competency activity. A presenter may receive credit for only the initial presentation during a renewal period.

81-006.03 Acceptable Topic Areas:

81-006.03A Hands-on or Non Hands-on Workshops: The following are the acceptable topic areas for continuing competency that may or may not apply to the mandatory 14 hours of continuing education earned through hands-on workshops. The method of delivery of the program determines hands-on or non hands-on.

- 1. Hydrotherapy - May include, but is not limited to, history, benefits of water treatment, cryotherapy, body wraps/masks, salt glows, body scrubs, body shampoos, moisturizers, hot packs, steam cabinets, dry brushing, therapeutic water modalities, methods of cold application, heat therapy, contrast baths, skin contra-irritants, spas, etc.;
- 2. Massage - May include, but is not limited, to history of massage, benefits of massage, physiology of massage, equipment and procedures, psychology of massage, interpersonal client contact, relaxation and visualization, proper draping techniques, general guidelines for massage, principles of body massage, reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy & infant massage, etc.; or
- 3. Other Topic Areas - May include topics covered on the NCBTMB, NCETM, ACE or MBLEx examination, such as but not limited to: western, non-western, energy work, Chinese medicine, holistic principles, stress management, CPR, first aid, and acupressure therapy.

81-006.03B Non Hands-on Workshops: The following are the acceptable topic areas for continuing competency (these do not apply to the mandatory 14 hours of continuing education earned through hands-on workshops):

- 1. Anatomy - May include, but is not limited, to structure of the human body, study of cells, tissues, bones, muscles, organ systems, histology, embryology, kinesiology, biomechanics, etc.;
- 2. Health Service Management - May include, but is not limited to, professional ethics, Nebraska Massage Therapy statutes and regulations, legalities of massage, business practices, promotion, employment opportunities, oral presentations, telephone techniques, marketing plan, sales techniques, resumes, bookkeeping, financial management, insurance coverage, networking, interview techniques; etc.;
- 3. Hygiene - May include, but is not limited, physiology of digestion, weight control, herbal therapy, nutrition, food combining, supplementation, wellness,

hygiene principles and practices, CPR, first aid, equipment and sanitation, infectious and contagious disease control; etc.;

4. Pathology - May include, but is not limited to, definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect, blood pressure, pulse monitoring, injury and soft tissue disfunction, etc.;
5. Physiology - May include, but is not limited, to endocrinology, biochemistry, interaction of hormones to the body's balance and metabolism, function of human body, and organ systems, kinesiology, biomechanics, etc.;
6. Ethics: Must include massage practice related ethics. Programs relating to ethics may be earned through workshops or homestudy programs.

81-006.03C Acceptable Continuing Competency Programs/Activities: The Board or Department does not approve continuing competency programs/activities. In order for a continuing competency activity/program to be accepted for renewal or reinstatement of a license, the activity must meet the following criteria:

1. The program must be at least 50 minutes in duration;
2. The program topic must relate to the topic areas listed in 172 NAC 81-006.03A, except that the 14 mandatory hours must be HANDS-ON massage which is the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy;
3. The program's objectives must relate to the specified topic areas;
4. The presenter of the program must be qualified by education, experience, or training;
5. Programs must be open to all massage therapists licensed in Nebraska;
6. The program sponsor must employ a system to obtain feedback and knowledge obtained by the licensee; and
7. The Program Sponsor must issue proof of licensee attendance. Such proof must include:
 - a. Name of the program;
 - b. Date of the program;
 - c. Location of the program;
 - d. Name of the licensee who attended the program; and
 - e. Name of the program sponsor.

81-006.03D Publications: In order for a publication to be accepted for renewal or reinstatement of a license, the publication/article objectives must relate to topic areas defined in 172 NAC 81-006.03B.

81-007 RENEWAL: An individual who wants to renew his/her massage therapy credential must request renewal as specified in 172 NAC 81-007.02. All massage therapy credentials issued by the Department will expire on November 1st of each odd-numbered year.

81-007.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify each credential holder at the last known address of record. The renewal notice will include:

1. The type of credential;
2. The credential number;
3. The expiration date;
4. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and
6. Information on how to request renewal and how to place a credential on inactive status.

81-007.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application.

1. **Application:** The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#) or Form I-94 (Arrival-Departure Record) number;Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - b. Must state that s/he is one of the following:
 - (1) A citizen of the United States;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act;
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;
 - c. May provide the following information about him/herself:
 - (1) The applicant's telephone number including area code;
 - (2) The applicant's e-mail address; and
 - (3) The applicant's fax number;
 - d. Must indicate that s/he:
 - (1) Is of good character;

- (2) Has met the continuing competency requirements specified in 172 NAC 81-006 or has requested a waiver if s/he meets the requirements of 172 NAC 81-007.03 and/or 81-007.04;
 - (3) Has not, since the last renewal of the credential, committed any act which would be grounds for action against a credential as specified in 172 NAC 81-008.01, or if an act(s) was committed, provide an explanation of all such acts; and
 - (4) For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.
2. Documentation: The applicant must submit the following documentation with the application:
 - a. Alien or Non-Immigrant: Evidence of lawful permanent residence, and/or immigration status may include a copy of:
 - (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#") with visa status; or
 - (4) A Form I-94 (Arrival-Departure Record) with visa status;
 - b. Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;
 - c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
 - d. Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;
 - e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
 - (1) A list of any misdemeanor or felony convictions;
 - (2) A copy of the court record, which includes charges and disposition;
 - (3) Explanation from the applicant of the events leading to the

- conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
- (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (6) Any other information as requested by the Board/Department; and

3. The renewal fee according to 172 NAC 2.

81-007.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 81-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

1. Military identification proving that s/he is in active service;
2. Military orders; or
3. A letter from his/her Commanding Officer indicating that s/he is on active duty.

Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain active until the next renewal period.

81-007.04 Waiver of Continuing Competency Requirements: The Department waives continuing competency requirements for individuals who were first credentialed within the 24-month period immediately preceding the renewal date.

81-007.05 Audit of Continuing Competency Requirements: The Department or the Board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.

81-007.05A The Department/Board will notify each selected credential holder by mail. Failure to notify the Department of a current mailing address will not absolve the credential holder from the requirement for audit.

81-007.05B Within 30 days, each selected credential holder must respond by submitting documentation that s/he has met the requirements for continuing competency. An extension beyond 30 days for submission of the documentation may be granted at the discretion of the Department. Documentation submitted by the credential holder will not be returned.

81-007.05C Acceptable documentation that the credential holder has met the continuing competency requirements include copies of:

1. Certificates of attendance;
2. Attendance rosters;
3. Transcripts or grade reports;
4. Letters from sponsors of continuing education verifying attendance; or
5. Other similar documentation.

81-007.05D The Department/Board will review the submitted documentation to determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.

81-005.05E The Department/Board will notify the credential holder upon satisfactory completion of the audit.

81-007.05F The credential of any person who fails to comply with the conditions of the audit will expire 30 days after notice and an opportunity for a hearing.

81-007.05G The Board reserves the right to audit continuing competency requirements of any credential holder by notifying the credential holder and requesting that s/he produce the required documentation of attendance at or participation in acceptable continuing competency programs within 30 days of mailing.

81-007.06 Department Review: The Department will act within 150 days upon all completed applications for renewal.

81-007.06A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

81-007.07 Address Information: Each credential holder must notify the Department of any change to the address of record.

81-007.08 Expiration of a Credential: A credential expires if a credential holder fails to:

1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;
2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or
3. Otherwise fails to renew his/her credential.

81-007.08A Failure to Renew: A credential automatically expires without further notice or opportunity for hearing if a credential holder fails by the expiration date of the credential to either:

1. Submit documentation of continuing competency; or

2. Pay the required renewal fee.

81-007.08B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.

81-007.08C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice massage therapy expires.

81-007.08D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 172 NAC 81-011 or such other action as provided in the statutes and regulations governing the credential.

81-007.08E Reinstatement of an Expired Credential: If a credential holder wants to resume the practice of massage therapy after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 172 NAC 81-010.

81-007.09 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status and continuing competency is not required.

81-007.09A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.

81-007.09B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in the practice of massage therapy, but may represent him/herself as having an inactive credential.

81-007.09C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 172 NAC 81-010.

81-008 DISCIPLINARY ACTIONS

81-008.01 Grounds for Action Against a Credential: A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
 - a. A misdemeanor or felony under Nebraska law or federal law, or
 - b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
6. Practice of the profession:
 - a. Fraudulently,
 - b. Beyond its authorized scope,
 - c. With gross incompetence or gross negligence, or
 - d. In a pattern of incompetent or negligent conduct;
7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 81-008.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
17. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the Uniform Controlled Substances Act;
18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
19. Failure to maintain the requirements necessary to obtain a credential;
20. Violation of an order issued by the Department;
21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
22. Failure to pay an administrative penalty;
23. Unprofessional conduct as defined in 172 NAC 81-008.02; or
24. Violation of the Automated Medication Systems Act.

81-008.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including but not limited to:

1. Receipt of fees on the assurance that an incurable disease can be permanently cured;
2. Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than:
 - a. With a partner or employee of the applicant or credential holder or his/her office or clinic;
 - b. With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts;
 - c. With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement; or
 - d. By a person credentialed pursuant to the Water Well Standards and Contractors' Practice Act;
3. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
4. Cheating on or attempting to subvert the credentialing examination;
5. Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;
6. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
7. Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
8. Knowingly disclosing confidential information except as otherwise permitted by law;
9. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
10. Failure to keep and maintain adequate records of treatment or service;
11. Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
12. Prescribing any controlled substance to:
 - a. Oneself; or
 - b. Except in the case of a medical emergency:
 - (1) One's spouse;
 - (2) One's child;
 - (3) One's parent;
 - (4) One's sibling; or
 - (5) Any other person living in the same household as the prescriber;
13. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession; and
14. Disruptive behavior, whether verbal or physical, which interferes with

consumer care or could reasonably be expected to interfere with the care.

81-008.02A Competence: A massage therapist must not provide services for which s/he is not trained or experienced. Unprofessional conduct in the practice of Massage Therapy includes, but is not limited to:

1. Willfully or intentionally committing any act which endangers client safety or welfare; and
2. Encouraging or promoting massage therapy by untrained or unqualified persons.

81-008.02B Public Statements: A massage therapist must be accurate and objective when advertising regarding professional services or products. Unprofessional conduct includes but is not limited to:

1. Advertising of massage therapy services which contains:
 - a. A false, fraudulent, misleading, deceptive statement;
 - b. A testimonial which attests to the performance of massage therapy in a superior manner or professional superiority; or
 - c. A statement concerning the comparative desirability of offered services;
2. Giving anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item;
3. Advertising for massage products offered for commercial sale without making reasonable efforts to ensure presentation of nondeceptive, accurate, or nonmisleading statements;
4. Knowingly permitting others to misrepresent the massage therapist's professional qualifications or the massage therapist's affiliation with products for personal gain of the massage therapist; and
5. Making deceptive or misleading representations of the massage therapist's education, training, or experience.

81-008.02C Confidentiality: A massage therapist must hold in confidence information obtained from a client, except in those unusual circumstances in which to do so would result in clear danger to the person or to others, or where otherwise required by law. Failure to do so constitutes unprofessional conduct.

81-008.02D Professional Relationships: A massage therapist must safeguard the welfare of clients and maintain appropriate professional relationships with clients and temporary licensees. Unprofessional conduct includes but is not limited to:

1. Using skills of the massage therapist to exploit clients;
2. Intentional failure to report to the Board of Massage Therapy known unprofessional conduct by a massage therapist;
3. Failure to decline to carry out massage therapy services that have been requested when such services are believed to be contraindicated or unjustified;
4. Failure to exercise appropriate supervision over a temporary licensee who is authorized to practice only under the supervision of the licensed massage therapist;

5. Willful betrayal of a professional secret except as otherwise provided by law;
6. Verbally or physically abusing clients or engaging in cruel, inhumane, or degrading practice in providing massage therapy to a client; or
7. Willful or intentional failure to accurately represent his/her skills to a client.

81-008.02E Sexual Misconduct: A massage therapist must under no circumstances engage in sexual acts with clients. Such unprofessional conduct includes, but is not limited to:

1. Providing sexual stimulation as part of massage therapy;
2. Soliciting a sexual relationship with a client;
3. Committing an act with a client punishable as a sexual or sexual related offense; or
4. Engaging in sexual harassment of a client. Sexual harassment means deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unnecessary in the professional relationship with the client.

81-008.02F Draping: A massage therapist must maintain appropriate draping for each client to ensure the comfort level of both the therapist and client.

81-008.03 Temporary Suspension or Limitation

81-008.03A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 81-008.01 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

81-008.03B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

81-008.03C A temporary suspension or temporary limitation of a credential under 172 NAC 81-008.03 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

81-008.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be

imposed and the time and place of the hearing.

81-008.05 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

81-008.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 81-008.05, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;
2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

81-009 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or constructed by the credential holder, which must include the following information:

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number; and
 - d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:
 - (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);

- c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
- 3. Attestation: The credential holder must:
 - a. Attest that all the information on the offer is true and complete; and
 - b. Provide the credential holder's signature and date.

81-009.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

- 1. An offer made by the credential holder on his/her own volition;
- 2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
- 3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
- 4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

81-009.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

- 1. Is under investigation;
- 2. Has a disciplinary action pending but a disposition has not been rendered; or
- 3. Has had a disciplinary action taken against it.

81-009.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

- 1. Whether the Department accepts or rejects the offer of voluntary surrender; and
- 2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
 - a. Duration of the surrender;
 - b. Whether the credential holder may apply to have the credential reinstated; and
 - c. Any terms and conditions for reinstatement.

81-009.04 A limitation may be placed on the right of the credential holder to practice a profession or operate a business to the extent, for the time, and under the conditions as imposed by the Director.

81-009.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

81-009.06 Reinstatement following voluntary surrender is set out in 172 NAC 81-010.

81-010 REINSTATEMENT: This section applies to individuals previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. Individuals may apply for reinstatement as follows:

1. An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.
2. An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.
3. An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for reinstatement.

The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

81-010.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter

The applicant must submit to the Department a written application on a form provided by the Department or constructed by the applicant.

1. **Application:** The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - b. Must state that s/he is one of the following:
 - (1) A citizen of the United States;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;

If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful permanent residence and/or immigration status which may include a copy of:

- (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#") with visa status; or
 - (4) A Form I-94 (Arrival-Departure Record) with visa status;
- c. May provide the following information about him/herself:
- (1) Telephone number including area code;
 - (2) E-mail address;
 - (3) Fax number; and
- d. Must indicate that s/he:
- (1) Is of good character;
 - (2) Has met the continuing competency requirements specified in 172 NAC 81-006 within the 24 months immediately preceding submission of the application;
 - (3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
 - (4) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 81-008 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
 - (5) For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.

2. Fee(s): The following fee(s):
- a. If the credential is expired or inactive, the reinstatement and renewal fees; or
 - b. If the credential was voluntarily surrendered, the renewal fee.

81-010.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take one or more of the following actions:

1. Assess an administrative penalty pursuant to 172 NAC 81-011, in which case a separate notice of opportunity for hearing will be sent to the applicant;
2. Deny the application to reinstate the credential;
3. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
4. Reinstate the credential.

81-010.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Deny the application for reinstatement of the credential;
2. Reinstatement the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstatement the credential.

81-010.01C The Department will act within 150 days on all completed applications.

81-010.01D The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

81-010.02 Reinstatement from Non-Disciplinary Revocation or Lapsed Status: An individual whose credential was placed on non-disciplinary revocation or lapsed status before December 1, 2008 may apply for reinstatement as provided in 172 NAC 81-010.01.

81-010.03 Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement according to the order entered by the Director.

The applicant must submit to the Board a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant must attest that all information in the application is truthful and complete, and the applicant, in his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement of the reason the applicant believes his/her credential should be reinstated;
 - b. Must state that s/he is one of the following:
 - (1) A citizen of the United States;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (INA) and who is eligible for a credential under the

- Uniform Credentialing Act; or
- (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States; If the applicant is an alien or non-immigrant, s/he must submit evidence of lawful permanent residence and/or immigration status which may include a copy of:
 - (1) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#") with visa status; or
 - (4) A Form I-94 (Arrival-Departure Record) with visa status;
- c. May provide the following information about him/herself:
 - (1) Telephone number including area code;
 - (2) E-mail address;
 - (3) Fax number; and
- d. Must indicate that s/he:
 - (1) Is of good character;
 - (2) Has met the continuing competency requirements specified in 172 NAC 81-006 within the 24 months immediately preceding submission of the application;
 - (3) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant has practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
 - (4) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 81-008 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
 - (5) For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, s/he is a citizen of the United States or a qualified alien under the federal Immigration and Nationality Act. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.

2. Fee: The renewal fee.

81-010.03A The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application.

81-010.03B The Department, with the recommendation of the Board, may:

- 1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;
- 2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more

physician(s) or other professionals appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;

3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;
4. Require the applicant to successfully complete additional education at the expense of the applicant;
5. Require the applicant to successfully pass an inspection of his/her practice site; or
6. Take any combination of these actions.

81-010.03C On the basis of the written application, materials submitted by the applicant, and the information obtained under 172 NAC 81-010.03B, the Board may:

1. Deny the application for reinstatement; or
2. Recommend to the Department:
 - a. Full reinstatement of the credential;
 - b. Modification of the suspension or limitation; or
 - c. Reinstatement subject to limitations or subject to probation with terms and conditions.

If the applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may assess an administrative penalty pursuant to 172 NAC 81-011, in which case a separate notice of opportunity for hearing will be sent to the applicant.

81-010.03D An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

81-010.03E Full Reinstatement: If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

81-010.03F Denial, Modification, Limitation, or Probation: If the Board's initial decision is to deny the application for reinstatement, recommend modification of the suspension or limitation, or reinstate the credential subject to limitation or probation with terms and conditions, notification of the Board's decision will be mailed to the applicant by certified mail.

1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.
 - a. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
 - b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with terms and conditions.
2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

81-010.03G Denial Decision: If the Board's final decision is denial of the application for reinstatement, the applicant will be notified by certified mail. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

81-010.03H Board Recommendation: If the Board's final recommendation is full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

81-010.03I Director's Review: The Director, upon receipt of the Board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement; or
2. Reverse or modify the recommendation if the Board's recommendation is:
 - a. In excess of statutory authority;
 - b. Made upon unlawful procedure;

- c. Unsupported by competent, material, and substantial evidence in view of the entire record; or
- d. Arbitrary and capricious.

The order regarding reinstatement of the applicant's credential will be sent to the applicant by certified mail. The Director's decision may be appealed to District Court by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

81-011 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to practice a profession or operate a business. Practice without a credential for the purpose of this regulation means practice:

- 1. Prior to the issuance of a credential;
- 2. Following the expiration of a credential; or
- 3. Prior to the reinstatement of a credential.

81-011.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialed:

- 1. The person admits to engaging in practice;
- 2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
- 3. Billing or payment records document the provision of service, care, or treatment by the person;
- 4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
- 5. Appointment records indicate that the person was engaged in practice;
- 6. Water well registrations or other government records indicate that the person was engaged in practice; and
- 7. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation, prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

81-011.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess the penalty, the Department will:

- 1. Provide written notice of the assessment to the person. The notice will specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska; and
 - e. That an unpaid administrative penalty constitutes a debt to the State

of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.

2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

81-011.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

81-012 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.

These Amended Rules and Regulations Replace Title 172, Chapter 81, Regulations Governing the Practice of Massage Therapy, effective January 3, 2005.

| | |
|------------------------------------|-------------------|
| Approved by the Attorney General: | February 18, 2010 |
| Approved by the Governor: | May 6, 2010 |
| Filed with the Secretary of State: | May 6, 2010 |

Effective Date: **May 11, 2010**